

Guardianships in North Carolina

N. Lorrin Freeman
Wake County Clerk of Court

Role of the Clerk in Guardianships

- The Clerk of Superior Court has judicial authority to determine competency, to make appointment of guardian and to modify or terminate existing guardianship pursuant to Chapter 35A of the North Carolina General Statutes

Guardianship Hearing Involves Three Questions

- Is the person incompetent? Only if we answer yes, do we get to the second question
- What type of guardianship is needed?
- Who would be an appropriate person to act as guardian? Guardian must always do what is in the “best interests of the ward.”

Guardianship Process

- Case is initiated by the filing of a petition by “any interested person”
 - Forms are available through the AOC
- Guardian ad Litem is appointed to gather information and to make report to the Court on the best interest of the individual
 - Payment provided by IDS if respondent is indigent
- Evidentiary hearing is conducted

Definition - Incompetent

- A person who lacks sufficient capacity to manage his/her affairs or to make or communicate important decisions concerning his/her person, family, or property
- Lack of capacity can be due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

Types of Guardianship

- Full guardianship – ward retains no rights
- Limited guardianship – ward does retain some rights

Rights that may be taken away

- Right to drive
- Right to vote
- Right to determine what you eat
- Right to determine where you live
- Right to determine who you see socially
- Decisions regarding employment
- Decisions regarding health care
- Decisions regarding finances
- Ability to sign legal documents, plus other rights

Types of Guardianships

- Guardian of the Person – will make medical, social, religious, residential and safety type decisions
- Guardian of the Estate – will make financial and legal decisions (e.g. bank accounts, selling property)
- General Guardian – is both guardian of the person and the estate

Types of Guardians

- Individual
 - most often family members
- Corporations
 - Corporations providing individual with mental health, developmental disabilities or substance abuse services for compensation may NOT be appointed
- Department of Social Services

Factors Considered in Making Appointment

- Needs of the individual
- Individuals available to serve
- Family dynamics
- Assets of the individual

Clerks strive to appoint a guardian who will serve the best interests of the individual